

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JUAN ACOSTA,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

Case No. 2:14-cv-1507-RFB-CWH

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a prisoner in the custody of the Las Vegas City Detention Center. On September 24, 2014, this Court issued an order denying the application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 2 at 1-2). The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 within thirty days from the date of that order. (*Id.* at 2). On December 23, 2014, this Court issued an order denying Plaintiff's motion for writ of prohibition or mandamus and directed Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 within sixty days from the date of that order. (ECF No. 6 at 3-4). The sixty-day period has now expired, and Plaintiff has not filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the

1 exercise of that power, they may impose sanctions including, where appropriate . . .
 2 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
 3 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
 4 failure to prosecute an action, failure to obey a court order, or failure to comply with
 5 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
 6 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
 7 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
 8 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
 9 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
 10 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
 11 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
 12 for lack of prosecution and failure to comply with local rules).

13 In determining whether to dismiss an action for lack of prosecution, failure to
 14 obey a court order, or failure to comply with local rules, the court must consider several
 15 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
 16 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
 17 favoring disposition of cases on their merits; and (5) the availability of less drastic
 18 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
 19 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

20 In the instant case, the Court finds that the first two factors, the public’s interest in
 21 expeditiously resolving this litigation and the Court’s interest in managing the docket,
 22 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also
 23 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
 24 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
 25 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public
 26 policy favoring disposition of cases on their merits – is greatly outweighed by the factors
 27 in favor of dismissal discussed herein. Finally, a court’s warning to a party that his
 28 failure to obey the court’s order will result in dismissal satisfies the “consideration of

1 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
2 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file another
3 application to proceed *in forma pauperis* or pay the full filing fee within sixty days
4 expressly stated: "If Plaintiff does not do so, his complaint shall be dismissed." (ECF
5 No. 6 at 4). Thus, Plaintiff had adequate warning that dismissal would result from his
6 noncompliance with the Court's order to file another application to proceed *in forma*
7 *pauperis* or pay the full filing fee within sixty days.

8 IT IS HEREBY ORDERED that this action is dismissed without prejudice based
9 on Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the
10 full filing fee in compliance with this Court's September 24, 2014 and December 23,
11 2014, orders.

12 IT IS FURTHER ORDERED that the motion for appointment of counsel (ECF No.
13 3) is denied as moot.

14 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
15 accordingly.

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17 DATED THIS 12th day of March, 2015.



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19 RICHARD F. BOULWARE
20 UNITED STATES DISTRICT JUDGE
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